

STATE OF MICHIGAN  
COURT OF APPEALS

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RICHARD MILLER,

Plaintiff-Appellee,

v

FARM BUREAU INSURANCE,

Defendant-Appellant.

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UNPUBLISHED

September 27, 2002

No. 231346

Kalkaska Circuit Court

LC No. 99-006731-NI

Before: Whitbeck, C.J., and Sawyer and Kelly, JJ.

MEMORANDUM.

Defendant appeals by leave granted the order denying its motion for summary disposition in this action for no-fault insurance benefits. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of an automobile accident that occurred when a vehicle driven by Brandon Knight struck a piece of lumber sticking out of the bed of plaintiff's truck. Farm Bureau Insurance insured both plaintiff and Knight. Plaintiff filed a third-party action against Knight, and this first-party action against his insurer for no-fault personal protection benefits. In the Knight action, a jury returned a no cause verdict, finding that plaintiff did not suffer an injury. Defendant moved for summary disposition in this action, asserting that plaintiff was barred by collateral estoppel from litigating the question of his injury. The trial court denied the motion.

This Court reviews de novo a trial court's decision to deny summary disposition, as well as issues concerning the application of the doctrine of collateral estoppel. *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999).

Collateral estoppel precludes relitigation of an issue in a subsequent cause of action between the same parties when the prior proceeding culminated in a valid final judgment, and the issue was actually and necessarily determined in the prior proceeding. *Id.* Generally, mutuality of estoppel is a necessary element of collateral estoppel. *Id.*, 481. Collateral estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him. *Id.* Mutuality of estoppel is coextensive with the requirement of identity of parties or privity. *Braxton v Litchalk*, 55 Mich App 708, 721; 223 NW2d 316 (1974).

Exceptions to the mutuality rule are generally confined to the defensive pleading of collateral estoppel. *Id.* Collateral estoppel may be raised defensively by a defendant in a subsequent action where that defendant and the defendant in the previous action had a special relationship, such as principal and agent, where the culpability of one of the parties is premised on the liability of the other party. *Couch v Schultz*, 176 Mich App 167, 170; 439 NW2d 296 (1989).

The trial court erred in denying defendant's motion for summary disposition. The issue of plaintiff's injury was fully litigated to final judgment in the first action. Farm Bureau Insurance provided the defense in both actions, and would have been required to indemnify Knight if plaintiff prevailed. The existence of plaintiff's injury was a necessary factor in both cases.

Reversed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Kirsten Frank Kelly